IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.597 of 2007

Kuppuswami .. Petitioner

Vs

1. The State of Tamil Nadu
   rep. by Secretary to Government
   Home, Prohibition and Excise Department
   Fort St. George
   Chennai-600 009.

2. The District Magistrate
   and District Collector
   Villupuram District
   Villupuram. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein calling for the records pertaining to the proceedings of the 2nd respondent vide C2/9107/2007 dated 01.03.2007 and quash the detention order dated 01.03.2007 passed by the 2nd respondent and as approved by the first respondent and produce the body of the detenu Siva @ Sivakumar before this Court.

For Petitioner : Mr.R.Sankarasubbu
For Respondents : Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner calls in question legality of the order of detention dated 1.3.2007 passed by the second respondent ordering detention of his son - Siva alias Sivakumar (hereinafter referred to as “the detenu”). The aforesaid detenu was detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video Pirates Act, 1982 (in short “the Act”) branding him as a "GOONDA".

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2. The order of detention dated 1.3.2007 was passed on the basis of ground case in Crime No.57 of 2007 for alleged commission of offences under Sections 392 read with 397 of the Indian Penal Code. The allegation against the detenu was that on 12.2.2007 at about 7.00 p.m., when the Taxi Driver, Ramesh was driving his car bearing registration No.TN-67-8242 from Kachirapalayam to Thiyagadurgam, near sugar factory at Kallakurichi Road, the detenu and his associates waylaid the car, brandished knives at Ramesh, pulled him out of the car and one of the associates of detenu put a knife on the neck of Ramesh and demanded as to what he had possessed in his pocket. One of the associates of the detenu threatened to kill him and snatched Nokia mobile from his shirt pocket and another associate snatched Rs.1200/- from his pant pocket. The said Ramesh started shouting and on hearing the same the nearby people came to spot. At that time the detenu instructed his associates to kill if anybody came near to catch him. All of them brandished knives so saying that the entire people of Salem District are afraid of them and that if anybody dared to come and catch them, they would kill them. The shop keepers downed the shutters out of fear. The vehicular traffic came to a standstill. The detenu and his associates escaped. On the complaint of the said Ramesh, the crime was registered at Kachirapalayam Police Station. That apart, the detaining authority also took note of the adverse case pending against the detenu in Crime No.78 of 2007 on the file of Chinnasalem Police Station for the offence punishable under Section 392 of the Indian Penal Code. Considering these activities of the detenu are prejudicial to maintenance of public order, the detaining authority passed the impugned order. The detenu was declared as an "Goonda" and was kept in custody at Central Prison, Cuddalore.

3. The main plank of the argument of the learned counsel for the petitioner is that when the ground case is with reference to the offence punishable under Sections 392 read with 397 Indian Penal Code, and the adverse case is also with reference to a similar offence, viz., offence punishable under Section 392 of the Indian Penal Code, there is no real possibility of the detenu coming out on the bail, in particular when the detenu had not filed any bail application.

4. We have perused the records produced before us. The ground case in Crime No.57 of 2007 is with reference to the offence punishable under Sections 392 read with 397 of the Indian Penal Code. The detaining authority stated that even though the detenu has not filed any bail application in Crime No.57 of 2007, there is a real possibility of his coming out on bail by filing a bail application for the said crime. But, the detaining authority had not taken note of the fact that the adverse case against the detenu in Crime No.78 of 2007 is also for a similar offence, viz., offence punishable under Section 392 of the Indian Penal Code and therefore, the real possibility of the detenu coming out on bail is not there.

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For the aforesaid reason, we are inclined to allow this petition. The order of detention dated 1.3.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:

1. The Secretary to Government
   State of Tamil Nadu
   Home, Prohibition and Excise Department
   Fort St. George, Secretariat
   Chennai-600 009.

2. The District Magistrate
   and District Collector
   Villupuram District
   Villupuram.

3. The Public Prosecutor,
   High Court, Madras.

1 CC To Mr.V.Shanmuganathan, Advocate, SR NO.53693.

H.C.P.No.597 of 2007

ASM(CO)
RVL 06.09.2007

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